36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 566.

EXPENDITURES IN THE WAR DEPARTMENT.

MAY 24, 1860.—Laid upon the table and ordered to be printed.

Mr. ANDERSON, from the Committee on Expenditures in the War Department, made the following

REPORT.

The Committee on Expenditures of the War Department, to whom were referred Senate document No. 29 and House document No. 22, by resolution of the House, instructing them to inquire into the subject therein treated of, the action of the War Department and of the officers in charge of the Capitol extension, and whether the late action of the War Department has been legal and right, or in violation of the legal rights of the contractors, Messrs. Rice, Baird & Heebner, having had the subject under consideration, submit the following report:

Upon examination of the documents referred, the committee find the only subject of difference between the Secretary of War and the said contractors to be in reference to the contract for furnishing monolithic shafts for columns in the porticos of the Capitol extension. This was the subject required to be investigated by the resolution of the House, and the committee will proceed to state the facts as they find them in the documents, and the conclusions to which they have arrived.

The original contract with Rice, Baird & Heebner for delivering all the marble required for the exterior of the Capitol extension was made on the 17th January, 1852. It included the stone for the columns in small blocks, and required the delivery of the whole within three years, but was subject to be suspended from time to time, in accordance with the action of Congress upon the necessary appropriations. The course adopted by the engineer, obviously in harmony with the spirit of the contract, was to receive the marble when delivered only upon orders accompanied with specific bills.

On the 1st of March, 1854, prior to any order for column blocks, and before they were needed in the progress of the work, Congress passed a joint resolution authorizing "a supplemental contract to be made with the contractors for marble for the Capitol extension to procure the columns and ashlar in larger blocks than required by their original contract." In pursuance of this law a supplemental contract was made with Rice & Heebner on the 30th March, 1854, by which

they agreed "to deliver for the one hundred columns of the exterior porticos so many monolithic shafts as their quarry may prove capable of furnishing, and the remainder of the whole number required in two blocks each, one of which to form two-thirds of the whole length of each shaft."

This supplemental contract did not constitute an order for the columns any more than the original contract; nor did either contract authorize the delivery of stone for the columns until the building should be ready for them, or until they should be ordered by the engineer. The first order ever given for the columns was on the 12th June, 1857, by letter of that date from Captain Meigs to the contractors, (page 54, Senate Mis. Doc., No. 29.) It is there conceded that the quarry had proved incapable of supplying the monolithic shafts, and the officer in charge proposed to fall back upon the terms of the original contract, which, in this particular, had been altered and set aside by the supplemental agreement. This is admitted in Captain Meigs' letter of 21st October, 1857, (page 71 of the same document,) in which he says the supplemental "annulled the original contract so far as the column shafts are concerned." He therefore "withdraws all orders for column shafts in small blocks," and calls upon the contractors "to furnish the whole number in single shafts, except the small proportion which may be in two blocks each."

Up to the date of this last letter there had evidently been no failure on the part of the contractors to comply with their obligations. Was there any failure afterward?

The Secretary of War, in his letter to the Hon. C. R. Train, chairman of the Committee on Public Buildings, sent to this committee, at their request, and dated April 11, 1860, assumes that the contractors were bound by the terms of the original contract to deliver these columns in three years from its date, and that they reaffirmed this undertaking in their supplemental agreement. Upon the basis of this proposition he proceeds to denounce the contractors in the following terms:

"They have not only violated their contract, but they deliberately announced the fact in writing to the superintendent in charge of the work, and declared their inability to comply with it. On the 30th May, 1859, they said, 'we admit that our quarry will not furnish the monolithic shafts in accordance with the specifications of our supplemental contract.' This declaration, it must be borne in mind, is made seven years after they had violated it by a steady non-compliance with its requirements."

This statement of the Secretary is not sustained by the facts. The contractors have never admitted any violation of the contract on their part. They were not required to furnish marble for the columns until five years after the date of the original contract; and if they had furnished it sooner the building would not have been ready, nor would any estimate or payment have been made. It is only necessary to look at the present condition of the work, which even at this day is not yet ready for the reception of the columns; and if they were all now upon the ground for delivery the government would not be prepared to pay for them, but, upon the theory of the Secretary, would

itself be in default for want of the necessary appropriation. By his letter of March 23, 1858, (page 12, Doc. 29,) Captain Meigs suspended all orders for marble except for the arcades under the columns, and those orders have not been renewed up to the present time. An examination of this letter will show how completely the provisions of all the contracts were necessarily controlled by the appropriations, and will establish the absurdity and injustice of the Secretary's statement that Rice and Heebner were in default because they had not furnished all the marble under their contract within three years from its date. If the columns had been delivered before the date of that letter they could not have been used in the building, and perhaps not paid for without interfering with some other more necessary part of the work. No injury has been done, and no delay has occurred for want of the columns. The censure of the Secretary is, therefore, in the opinion of the committee, entirely groundless.

The letter of the contractors which the Secretary quoted is to be found on page 127 of the document already cited. A fair representation of the position taken in that letter would have required the quotation of a few more sentences, thus: "We admit that our quarry at Lee will not furnish the monolithic shafts in accordance with the specifications of our supplemental contracts. This is no fault of ours. At the time we made the contract to furnish the shafts you believed, and so reported, that the quarry would furnish them; we also were of the same opinion. Nature, however, has not supported our conclusions."

This contingency of a failure of the quarry is expressly provided for in the supplemental contract. Only so many of the monolithic shafts as the quarry might be capable of producing were to be delivered. It proves incapable of producing any; therefore the contractors could be required to furnish none. Both the engineer and the contractors were mistaken in their estimate of the capacity of the quarry; but it cannot be said by any fair or legal interpretation of the contract that any default is chargeable to the contractors. It is not so plain, however, that the government has fulfilled its part of the agreement. The alternative condition of the contract, that the remainder of the column shafts, after furnishing all that could be obtained in one piece, might be furnished in two blocks each, was distinctly repudiated by the engineer in charge of the work. In his letter of September 5, 1859, Sen. Doc. 29, page 67, he says:

"They (the contractors) for the last year have informed me that they did not believe the quarry would enable them to furnish any monoliths, and upon an inspection of it I concluded that, without great delay, we could not get them according to the second contract. But they proposed and wished to furnish two-third shafts. I did not regard these as making so good a job as the four feet frusta," &c.

So, in the contractors' letter of April, 1859, page 123, same document, they say:

"We do not pretend that we can furnish the columns in single blocks, but our contract does not require this. In case of a failure of our quarry to furnish stone large enough for single blocks it provides that they shall be furnished in two pieces. This latter condition we believe

we can fill, and shall proceed to do so on the revocation of your order of the 23d," &c.

It is plain from these quotations that the contractors have done everything that could have been required by the terms of their agreement; and the only doubtful point in the whole case is, whether the government itself is not in fault, and has not violated its contract by refusing to receive the column shafts in two blocks after the fact was fully established that monoliths could not be obtained. But, waiving this refusal on the part of the government, it is evident that, inasmuch as the quarry would not furnish the monoliths, the contract, as to them, became a nullity, not by the fault of the contractors, but by the very terms of the instrument itself. It follows, then, that the joint resolution of the 1st March, 1854, authorizing a change of the original contract, so as to obtain larger blocks for the columns, remains unfulfilled. The first contract has been annulled in this particular; but there has been no failure on the part of the contractor under his second contract, such as would authorize the Secretary to go into the open market and buy materials, holding the contractors responsible. It is a case in which he has made an unsuccessful attempt to execute the provisions of the joint resolution above mentioned. Not having succeeded in accomplishing the object of the law it his duty still to execute it according to its terms. But that law authorizes him "to contract with the contractors for marble for the Capitol extension," and with nobody else. This is not only the legal view of the case, but it is the view which good faith and fair dealing, under the circumstances, would require to be taken. If the parties interested had exhibited any unwillingness to make a reasonable contract there might possibly be some excuse for the proceedings of the Secretary. On the contrary, however, they have shown every disposition to accommodate the department, and have made every possible exertion to comply with its fair requirements. When their supplemental contract proved abortive, by the failure of the quarry therein mentioned, they proposed to furnish Italian marble at the price agreed upon for American marble.—(Sen. Doc. No. 29, pp. 75 and 81.)

In their letter of May 28, 1859, they made the following proposition:

"If you decide to have them in monolithic shafts, we respectfully ask permission to furnish them from any other quarry or quarries, upon the same terms and prices as specified in our supplemental contract, to be equal in quality and appearance to the marble now in the capitol extension, and to be approved by the engineer now in charge of the work."

Some two years have been expended in negotiations for the columns in smaller blocks, with the knowledge and participation of the Secretary himself, and it had not yet been fully determined to procure monolithic shafts. But, on the 30th of June, 1859, the foregoing proposition of the contractors was formally accepted by the engineer, acting upon express authority of the Secretary, and six months from the 1st July, 1859, were allowed, within which to furnish a satisfactory specimen of American marble, &c.—(See letter, pp. 136-'7 Doc. 29.)

After much fruitless negotiation, here is a final proposition, made by

the contractors and accepted by the government, constituting a contract, subject only to the selection of the marble by the engineer in charge of the work. But how does the Secretary treat this accepted proposition? In his letter to the chairman of the Committee on Public Buildings, already referred to, he says: "Anxious for the prosecution of the work, and willing to extend to these people every indulgence, I revoked an order directing their contract to be forfeited, and gave them six months longer to present specimens of their marble, and the capacities of other quarries to furnish the material. Of this they were duly notified. Of this notification, so far as I am informed, they took no notice, unless, indeed, sending some pieces of marble to the superintendent's office, at some time unknown to the department, could be construed into a recognition of it. They gave no evidence of having accepted the terms of the order within the time specified, nor, in fact, have they done so up to the present time, so far as I know."

In this extraordinary statement the Secretary overlooks the fact that he himself accepted the proposition offered by the contractors, and by that means concluded a contract subject to the decision of the engineer as to the specimens of marble to be presented. These were in the engineer's office within the time stipulated, as will appear from the correspondence, (pages 142 and 143, Doc. 29.) Page 144, the engineer informs the Secretary that the contractors had practically answered the letter of June 30, 1859, by bringing to the office six different marbles for examination and test, and had "expressed themselves ready to furnish the shafts from any one of these specimens." As to the capacity of the quarries, the contractors' letter of the 5th of January, 1860, in reply to that of the engineer dated December 29, 1859, completely meets all the requirements of the department, and leaves the Secretary without any ground of justification. The engineer was the proper officer, and the only one with whom the contractors could communicate, and their proceedings were regular and unexceptionable.

It will be observed that the contractors proposed, among others, to furnish the column shafts from Conolly's quarry in Maryland, and a specimen of the marble was presented. This quarry was afterwards selected by the Secretary himself, in the contract which he subsequently made in violation of the contractors' rights, and in opposition to the provisions of the law. In addition to this, it appears that so early as May 11, 1859, (page 121, Doc. 29,) the Secretary had ordered the engineer to make a contract with Conolly for monolithic shafts of this marble, which order was suspended by the President. And yet, when a specimen of this very marble was presented by the parties entitled to the contract, the Secretary complains that he has no evidence of the capacity of the quarries; and then, so soon as he thus discharges the regular contractors, he arbitrarily makes a contract for the same marble, at a price as high, if not higher, than that stipulated in the arrangement with Rice & Heebner. These gentlemen had obtained a lease for the quarry in question on the adjoining land, and were then, and still are prepared to carry out their agreement. They have shown their capacity to fulfill any contract they may make. They are known to be entirely responsible, and they have had as much experience in the business as any other men in the country. (See Engi-

neer's Report, page 114, Doc. 29.) But, in view of the excuse made by the Secretary for his utter disregard of the rights of the contractors, the most extraordinary exhibition is given in his order of December 31, 1859, (page 144, Doc. 29,) by which he directs Captain Franklin to visit the six quarries from which Rice, Baird & Heebner had furnished specimens for marble shafts for the Capitol extension. It is charitable to suppose that the Secretary had forgotten this order when he wrote his letter to the chairman of the Committee on Public Buildings. The engineer did not examine the quarries, objecting that the snow would prevent a satisfactory examination; and in the meantime the Secretary concludes his contract with Conolly for marble from one of the quarries, which he would not accept from Rice & Heebner, upon the pretext of want of knowledge of its capacity.

There is a paragraph in the Secretary's letter to the chairman of the Committee on Public Buildings which seems to question the fairness of the supplemental contract, and which, therefore, demands attention. It is as follows:

"This supplemental contract stipulated for larger blocks, and very much larger prices. It granted a great and valuable boon to the contractors. It gave them $1 98 per cubic foot for all blocks which exceeded eighteen inches on the bed in depth on the wall, which stone, in the original contract, would have cost 65 cents per foot, an increase in price, for all this description of stone, of three hundred *per cent.* It has been offered in explanation of this proceeding, that this enormous increase of price for the small stone was to enable the contractors to procure monolithic shafts for the columns, whilst, certainly to secure this end, the price of $500 or $600 for the columns in six pieces was raised to $1,400 for those in a single block."

It will be remembered that the supplemental contract was authorized by a special law, for the express purpose of increasing the size of the blocks, both ashlar and columns. The committee, not themselves familiar with the subject, have learned from Captain Meigs, who made the second contract, that while the Secretary's literal statements in this extract appear to be very nearly true, the omission of attending facts renders his inferences altogether unjust. By the specifications of the original contract, the smaller stone required for the building amounted to about 9,000 cubic feet in pieces of very moderate size, which could easily have been furnished in the process of quarrying the larger pieces. But as the freight and expenses on these was not less than 43 cents per cubic foot, the price of only 65 cents involved an actual loss to the contractors. This loss, upon a comparatively small quantity of stone, they were willing to bear, for the sake of other advantages in the original contract. But after the appointment of Captain Meigs, an important and very judicious change was made in the plan of the building, involving a material alteration in the specifications. The small blocks were increased to twenty-eight or twenty-nine cubic feet in size, barely within the limit for which the higher price was stipulated in the original contract, while the quantity was raised from 9,000 to at least 45,000 cubic feet. By the first specifications the beds were to be only nine inches, but in the altered plan they were to be thirty inches. It is obvious that the new arrange-

ment would require each of the smaller stones to be quarried separately and carefully, and would involve equal expense with the larger ones originally stipulated for. The contractors could not have carried out the contract under the new specifications, upon the terms of the original contract, without a most ruinous loss. The assertion of the Secretary, therefore, that this supplemental contract granted a great and valuable boon to the contractors, is untrue and unjust. It gave them no more than a fair compensation for their labor and material. As to the proposition for the monolithic shafts, it is only necessary to refer to the bids made in reply to the proposals of September, 1858, and to the contract recently made with Mr. Conolly, both of which concur in negativing the idea or inference that any unfair advantage was given to Rice and Heebner in their supplemental contract for the monolithic shafts.

It only remains now to inquire whether the action of the Secretary, in directing the engineer to purchase the columns of Mr. Conolly, (Doc. 22, page 7,) was legal and consistent with the rights of the original contractors. It has already been shown that the joint resolution of March 1, 1854, authorized a contract for larger blocks to be made only with the original contractors, and not with any other person. They then had an existing, valid contract for furnishing the whole of the marble, including the columns. When Congress deemed it necessary to alter the plan, and require larger blocks for both ashlar and columns, they did not propose to violate that contract and give it to others; they provided only for its modification in the particulars mentioned. The Secretary of War is not equally careful of the contractors' just rights and expectations.

Whatever may have been the merits of the previous controversy, the committee are of opinion that when, on the 30th of June, 1859, (Doc. 29, page 137,) the Secretary accepted the proposition of the contractors to furnish any other marble that might be approved by the engineer, all preceding difficulties were fairly waived and settled. It is true the arrangement was conditional, depending only upon the action of the engineer upon the specimens of marble presented. But the contractors had done all they were required to do; and the Secretary had so far acknowledged this fact, that he had ordered the engineer to visit the several quarries for the purpose of making the selection according to the terms of the pending contract. It was in this state of the case, while the contract was actually pending, that the Secretary ordered the purchase to be made of Mr. Conolly. The committee are of opinion that this proceeding was not in accordance with good faith and fair dealing.

They are also of opinion that it was not in conformity to law. At the time of this order the appropriation had all been exhausted; there was not a dollar subject to be drawn from the treasury for the purpose of making the purchase. The act of May 1, 1820, prohibits the Secretary of War from making any contract "except under a law authorizing the same, or under an appropriation adequate to its fulfillment." And the act of 1852, made in reference to this very Capitol extension, requires all contracts to be advertised sixty days, and pronounces illegal and void all which are made without advertisement. The officer in

charge ventured to remind the Secretary of these laws in his letter of March 7, 1860, (Doc. 22, page 7,) and the Secretary in his labored reply, (Doc. 22, page 9,) unable to resist the force of this objection, assumes the extraordinary position that he did "not direct a contract to be made with Conolly;" and further says, "if you had entered into a contract you would have violated the letter and spirit of that order." The terms of the order were: "You will take the necessary steps to purchase from Mr. John F. Conolly one hundred monolithic marble columns," &c. The Secretary had no money, and Mr. Conolly had no columns, except in the quarry. It would be difficult to say what steps could be taken under such circumstances without a contract or agreement of some sort. If there has been no such agreement or understanding, then no contract has been made. But if Mr. Conolly has been informed that his columns will be taken at the price stated, and if he has agreed to deliver them, then a contract has been made, and in direct violation of law. In either case, however, no liability has been incurred by the government, for a contract illegally made by a public officer can impose none. It is obvious that the agreement made with Rice, Baird, and Heebner stands upon a different footing. They had an existing contract under a law expressly authorizing it, and as they could not get the marble from the Lee quarry the government might well agree to accept any other suitable marble in fullfillment of that existing contract. Or, if the Secretary preferred to consider that contract as having failed and become a nullity, he had power to fall back upon the unexecuted law of the 1st of March, 1854, and make a new contract to accomplish the object. These two propositions amount in substance to the same thing, and are equally conclusive as to the rights of the original contractors in the premises.

After the most mature investigation the committee have been able to give to this subject, it appears to them that the contractors have in good faith struggled, while laboring under many difficulties, to comply not only with the contract but with the various requirements of the government. They are now and have been ready, and have sufficient means and ability, to furnish monolithic columns from any marble quarries at home or abroad as shall be approved, upon the terms originally proposed, or as subsequently modified, and at a day as early as they can be obtained elsewhere. No advantage to the government can be obtained by treating these contractors harshly, and to abrogate the whole or a part of their contract by making the purchases from other parties, waiving the questionable legality of such a measure, would be an imputation upon these contractors which they do not merit.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 566.

EXPENDITURES IN THE WAR DEPARTMENT.

JUNE 8, 1860.—Laid upon the table, and ordered to be printed.

MINORITY REPORT.

Mr. LARRABEE, from the Committee on Expenditures in the War Department, submitted the following views of a minority of that committee:

The undersigned, one of the Committee on Expenditures of the War Department, dissenting from the conclusions set forth in the report of the majority of the committee as to the action of the department in the matter of the contract of Messrs. Rice, Baird & Heebner for furnishing the marble necessary for the exterior of the Capitol extension, begs leave to submit the following statement of his views in relation to that subject:

This contract was entered into on the 17th day of January, 1852. A joint resolution was passed by Congress on the 1st day of March, 1854, authorizing a supplemental contract to be made with the same parties, "to procure the columns and ashlar in larger blocks than required by their original contract." The resolution did not prescribe the terms on which such contract should be made, but left the agents of the government free to adopt such as their best judgment might determine to be proper. On the 30th of March, 1854, in accordance with the resolution, the supplemental contract contemplated was made with the parties constituting the firm of Rice, Baird & Heebner.

The preamble to this contract stated, as the reason for entering into it, that it was desired by the United States to procure the ashlar work with larger beds than required by the specifications of the original contract, and also columns with monolithic shafts. The contract goes on to provide that the marble for the exterior of the extension should be furnished in blocks of such size, not exceeding one hundred and twenty cubic feet net, as might be, from time to time, ordered by the party of the first part, and so many of the one hundred columns for the exterior of the porticos, in monolithic shafts, as the quarry of the parties of the second part might prove capable of furnishing; the remainder of the whole number required to be in two blocks each, one

of which should form two-thirds of the whole length of each shaft. It was next stipulated that these contractors should be paid one dollar and ninety-eight cents per cubic foot for all the blocks of marble for the exterior, the beds of which should exceed eighteen inches, and at the rate of $1,400 for each monolithic column shaft, and $1,100 for each shaft delivered in two pieces. It was further stipulated that in case the officer or agent of the United States in charge of the Capitol extension for the time being should at any time be of opinion that the contract was not duly complied with, or that it was not in due progress of execution, or that the parties were irregular or negligent in its performance, he might declare it forfeited, and thereupon it should become null as to the United States; the party of the second part to have no appeal from such decision, nor any right to except to or question the same, but to remain liable to the United States for the difference between the prices stipulated in the contract and those the United States might pay for the marble necessary to finish the work, as well as for all damages occasioned by such failure, neglect, or irregularity. Such, in substance, are the material provisions of this supplemental contract; and, in order to fully comprehend the rights and obligations of the parties thereto, the manifest distinction as to furnishing the blocks of marble specified, and the monolithic or other shafts, should be carefully kept in view.

The contract under consideration expressly provided that the original contract of January 17, 1852, should remain in full force as to all of its provisions and conditions, except so far as they were modified as to the size and price of the blocks. The modification contemplated by the joint resolution related only to an increase of size in the blocks for ashlar and columns over that required by the act of 1852. These the contractors were to furnish from the Lee quarry. In the summer of 1857 the superintendent in charge of the extension had made such progress with the work that he was ready for the reception of the column blocks, and accordingly, in his correspondence with the contractors, urges that no time should be lost in complying with this portion of their contract. It had already been ascertained that no such columns as were provided for by the supplemental contract could be furnished from their quarry. They could furnish no monolithic shafts, nor could they procure from it any in two pieces of the dimensions required. Admitting that, by the terms of their contract, they were not bound, in fact, to furnish a single shaft of the former description, for the capacity of the quarry from which they were to obtain them might not enable them to do so, they were then unquestionably under obligation to deliver the whole of them in two pieces as specified. Unable to do either, most clearly they had incurred a forfeiture, and the superintendent would have been entirely justifiable in so declaring.

Failing then to fulfil their contract in this essential part of it, one for which Congress intended to provide in the joint resolution authorizing a modification of the original contract, they proposed, so far as the dimensions of the blocks are concerned, to return to the contract of 1852, which allowed them to furnish the columns in pieces not exceeding four feet in height; but they urged that they should be paid a higher price than by its terms was stipulated. To this

arrangement, which was proposed in a letter to him of the date of November 4, 1857, the superintendent very properly declined to consent, taking the position that, in this particular, the original was superseded by the supplemental contract, and insisting upon their fulfilment of the latter. In the same letter they made an alternative proposition for the delivery, on the wharf at Washington, of one hundred columns in single shafts, at $1,700 each, being $300 for each column more than was stipulated for such as they had engaged to furnish from their own quarry by the contract of March 30, 1854.

The contractors certainly have no reason to complain of rigorous treatment at the hands of the War Department. Captain Meigs, the superintendent of the work, seems to have been actuated throughout the progress of the whole matter by a desire to afford them every possible opportunity to perform their obligations. It may be that he was too indulgent towards them, and that had he promptly decided their contract to be forfeited, when it was fully ascertained that they could not fulfil it, much trouble would have been avoided, as well as unnecessary delay in the completion of the work confided to his care. For nearly a year after the superintendent had commenced to urge the delivery of the column blocks a correspondence was continued between himself and the parties, the whole tenor of which shows that they had abandoned all idea of being able to comply with the terms of their contract, and an anxiety on his part to suggest the means of saving themselves from a forfeiture of its benefits.

On the 22d of May, 1858, as appears from a report made by Captain Franklin, which is contained in Sen. Mis. Doc. No. 29, an offer was made by Mr. Heebner, one of the contractors, "to deliver the column of Italian marble, in all respects as specified in the contract of March 30, 1854," and Captain Meigs recommended the acceptance of this proposition. He was directed by the department to visit such quarries in the United States as were likely to be capable of furnishing the columns. Having performed this duty, he reported, in the month of September, 1858, that, in his opinion, "the quickest and best mode of procuring the shafts for the porticos would be to accept the offer of Mr. Heebner." As, however, the schedule attached to the contract called for *American* marble, and passed under the dictation or approval of Congress, the Secretary of War did not think it admissible to accept this offer, and directed the superintendent to prepare an advertisement for proposals for delivering the column shafts either in single blocks or in pieces not less than four feet in length, according to specifications in former contracts, &c., which was done, and on the 18th of December, 1858, the bids were transmitted to the department for its action. In the meantime the contractors protested against awarding the contract for materials, which it was established they could not furnish, to other parties, maintaining that their contract in this particular, as in all others, was still in force. Inasmuch as their contract had not been declared to be forfeited, the proposals under the superintendent's advertisement were subsequently dismissed. This is explained in a communication to him from the Secretary of the date of March 29, 1859, in which also he is directed to inform the department whether the contractors have been and are still supplying marble of the description

and dimensions required, and with the punctuality which the steady progress of the work demands, and whether they are prepared to continue the supply to the fulfilment of their contract.

On the 10th of May, 1859, the superintendent reported that the contractors had no prospect of continuing the supply of marble to the fulfilment of their contract so far as regards the column shafts, and that they could not, in a reasonable time, supply from the Lee quarry shafts, even in six pieces, and at the same time furnish the large quantity of other marble needed for the building. This he reported after visiting and inspecting the quarry. He also reported that he had visited the quarry of Mr. Connolly, near Baltimore; that he thought it capable of furnishing one hundred monolithic shafts, and while regretting it was not of such beauty as to enable him *heartily* to recommend its adoption, added that if it should be determined to use American marble it was not probable that any better would be found, or any quarry that could furnish it so quickly.

The Secretary of War thereupon declared the contract of Messrs. Rice, Baird & Heebner forfeited, and directed Captain Meigs to contract with Mr. Connolly for monolithic columns. This order was suspended by the President on the 19th of May, 1859, for further consideration until after the return of the Secretary, who was then in Virginia.

On the 14th of the same month Captain Meigs had informed the department that notice of the forfeiture of the contract had been given to the contractors, and asked for instructions as to the terms of the proposed contract with Connolly, whose bid, under the advertisement for proposals of September, 1858, he considered to be too high. He was afterwards directed by the Acting Secretary of War to visit all the quarries from which proposals for monolithic shafts had been received, and all other quarries which he thought might furnish them, so as to obtain full information before deciding the question relating to the supply of marble for columns. On the 22d of June following he reported that he had visited seventeen quarries, and had ascertained that from several American quarries it was possible to obtain monolithic shafts, "though inferior in beauty to the Italian." He also reported that he had received a letter from the contractors, offering to furnish the shafts according to the terms of their contract, substituting marble from some other quarry or quarries for that of Lee, to be approved by the officer in charge of the extension. He advised the acceptance of their proposition, and the allowance to them of six months for furnishing satisfactory specimens, *with probable evidence that the quarry would supply one hundred monoliths of quality equal to the approved specimens within a reasonable time.*

This recommendation having been approved by the department, the contractors were notified accordingly on the 30th of June last, and were allowed six months from July 1, 1859, within which to fulfil their proposition.

From the report of Captain Franklin, of the 7th of January last, it appears, further, that six specimens had been deposited in his office, of which he considered that from the Dover quarry, in New York, more nearly up to the required standard than any of the others, *but*

no proof was given of the probable capacity of the quarries. The time required to procure the columns from this quarry was estimated by the contractors at from five to seven years—a time too long to be deemed fairly within the definition of the term reasonable. It remains to be seen whether, within any reasonable time, columns of the kind required can be furnished of American marble, the material contemplated by the modification of the original contract.

The undersigned has thought proper to go somewhat into detail as to the facts of this transaction, because, in his opinion, they show that the action of the Secretary of War in the premises is not justly subject to censure, but that he has been anxious to effect the object proposed in the joint resolution of Congress of March, 1854, while, at the same time, he was desirous not to take any step in relation to the matter which might seem oppressive as regards the gentlemen with whom the government had contracted. He did not declare their contract forfeited until long after it was ascertained, beyond a question, that they could not fulfil it, and they had themselves confessed their inability to do so. Nor did he propose to deprive them of the benefit of any other portion of it than that relating to the furnishing of columns. In this, beyond a doubt, they had been delinquent, and good faith to the government, and regard for his official responsibility, required him to adopt the course he has pursued. Had the contract, made in pursuance of the joint resolution, and which appears to have been approved by Congress, permitted the use of other than American marble, the contractors, through Mr. Heebner, in offering to supply single shafts of Italian marble, should, and probably would, have been met by the Secretary with an acceptance. They undoubtedly evinced in this a laudable desire to fulfil their contract in the best possible manner, and the undersigned cannot but believe that it would be but fair to these contractors, and justice to the government, to order of them columns of Italian marble such as they have offered; for it does not seem probable that suitable columns can be obtained in single shafts of American material.

CHARLES H. LARRABEE.